

NO. PD-1061-19

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**IN THE COURT OF  
CRIMINAL APPEALS OF TEXAS**

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FILED  
COURT OF CRIMINAL APPEALS  
5/28/2021  
DEANA WILLIAMSON, CLERK

**ORLANDO ORTIZ,**  
*Appellant,*

v.

**THE STATE OF TEXAS,**  
*Appellee.*

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**APPELLANT'S MOTION FOR REHEARING**

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

NOW COMES APPELLANT ORLANDO ORTIZ and moves for reconsideration, and states as follows:

1. APPELLANT adopts by reference and urges the same grounds urged for reconsideration in consolidated case PD-1362-18.
2. More specifically, APPELLANT moves for reconsideration on the grounds that the majority's opinion conflicts with *Beck v. Alabama*, 447 U.S. 625 (1980) and violates Appellant's constitutional right to due process of law and his protections against cruel and unusual punishment.

3. APPELLANTs case is an exemplar of how barring the lesser-included offense “substantially increases the risk of error” in the manner prohibited by *Beck*. The photographs of the victim’s hands and cited portions of the record in APPELLANT’s Brief show undisputed physically evidence which is wholly inconsistent with the victim’s version of what happened (Appellant’s Brief pp. 4-6).

4. For these reasons the Court should withdraw its opinion and judgment and affirm the Court of Appeals.

Wherefore, premises considered, APPELLANT ORLANDO ORTIZ requests that the Court grant rehearing, withdraw its opinion and judgment, affirm the judgment of the Court of Appeals, and grant APPELLANT such other relief to which APPELLANT is entitled.

Respectfully submitted,

/S/ NOHL BRYANT

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## **CERTIFICATE OF COMPLIANCE**

I certify that this Brief contains **396** words, excluding the words exempted by Rule 9.4(i)(1) of the Rules of Appellate Procedure.

/S/ NOHL BRYANT

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## CERTIFICATE OF SERVICE

I certify that the foregoing instrument has been served on May 27, 2021 on the persons named below, in the manner described adjacent to their respective names, all in accordance with Rule 9.5 of the Rules of Appellate Procedure.

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